IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

WP(C).No. 32840 of 2005(H)

AGAINST THE ORDER DATED 28/07/2005 IN EP.134/03 IN OS.990/1999 of II ADDL.SUB COURT,THRISSUR

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PETITIONER:

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1. PRASAD K.PANICKER,
   S/O.PURUSHOTHAMAN MASTER,
   KUNNAPPILLY HOUSE, ELAVALLY VILLAGE,
   CHAVAKKAD TALUK.

2. LAKSHMANAN, S/O.KUNJIRAMA KURUP,
   ELITE QUARTERS, THAIKKAD VILLAGE,
   CHAVAKKAD TALUK.

BY ADV. SRI.K.R.RAJKUMAR
SRI.A.R.GANGADAS

RESPONDENTS:

KOVILAKAM CHITS & FINANCIAL SERVICE
PVT. LTD., THRISSUR.

BY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO. 32840/2005

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE EXECUTION PETITION E.P. NO. 134/03

EXT.P2: COPY OF COUNTER AFFIDAVIT FILED BY THE 1ST JUDGMENT DEBTOR

EXT.P3: COPY OF COUNTER AFFIDAVIT FILED BY 2ND JUDGMENT DEBTOR

EXT.P4: COPY OF THE PROOF AFFIDAVIT FILED BY THE DECREE HOLDER.

EXT.P5: COPY OF THE PROOF AFFIDAVIT FILED BY THE 1ST JUDGMENT DEBTOR.

EXT.P6: COPY OF THE ORDER DATED 28.7.2005 IN E.P. NO. 134/03 IN O.S. NO.990/99 ON THE FILE OF SUB COURT, THRISSUR.

EXT.P7; COPY OF THE RECEIPT ISSUED BY THE COUNSEL FOR THE RESPONDENT APPEARING IN THE LOWER COURT.

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 32840 of 2005

Dated this the 6th day of June, 2007

JUDGMENT

Ext.P6 order passed by the learned Subordinate judge, finding that both the petitioners who are judgment debtors in a money decree which was obtained by the first respondent are having sufficient means to pay off the decree debt and are wilfully neglecting to pay and directing their arrest on the basis of such finding, is under challenge. While admitting this writ petition, this court imposed condition that the petitioners pay a sum of Rs.50,000/- within one month. That condition was not complied with in full. Only Rs.25,000/- was paid. Application filed by the petitioners for enlargement of time was considered and this court ordered that stay will continue only if balance amount of Rs.25,000/- is deposited by 11.1.2006 and further amount of Rs.25,000/- is deposited on or before 25.1.2006. It is conceded by the learned counsel that these two subsequent payments

ordered to be paid have not been made at all.

2. I do not think that this court will be justified in invoking discretionary jurisdiction in favour of somebody who refuses to comply with the conditions imposed by this court. The learned counsel for the petitioners submits that on account of penury only that the petitioners could not comply with the conditions. On going through Ext.P6 I find that there was no serious challenge even to PW1's evidence that the 2nd petitioner who is a senior lecturer in Sree Krishna College, Guruvayoor is having means. The finding that the first petitioner is having means is based on the evidence of PW1 and petitioners own evidence. I do not find any warrant for setting aside Ext.P6 under the visitorial jurisdiction of this court.

However, as I confirm Ext.P6 and dismiss the writ petition, there will be a further direction that coercive steps will not be issued by the learned Subordinate Judge for arresting and detaining the petitioners in prison in furtherance to Ext.P6 on condition that the petitioners pay to the respondent either directly or through their counsel in the court below a sum of

Rs.10,000/- (Rupees Ten Thousand only) on the first of every month commencing from 1st July 2007 till such time as the entire decree debt is wiped of. Once the petitioners become sure that the entire decree debt is wiped of, it is open to them to file an application for recording satisfaction. The court below will consider that application and dispose of the same after hearing both sides. It is made clear that in the event of defaults in payment of any of instalments, the petitioners will forfeit the benefits of this judgment.

PIUS C. KURIAKOSE,
JUDGE.

dpk